Leon County, Department of Growth & Environmental Management

INTEROFFICE MEMORANDUM

TO: Herbert W.A. Thiele, Esq., County Attorney

FROM: Clay Carithers, Environmental Review Supervisor

CC: Suzanne Schmith, Assistant County Attorney
Alan Rosenzweig, Director, Office of Management and Budget
Gary W. Johnson, Director, Growth and Environmental Management
John Kraynak, Director, Environmental Compliance

DATE: October 20, 2003

RE: Assessment of Lands Subject to a Conservation Easement, Environmentally Endangered Lands, or Lands Used for Outdoor Recreational or Park Purposes

During their regular meeting on September 23, 2003, the Board considered a request for the County to pursue development of ordinances and procedures necessary to implement Section 193.501 of the Florida Statutes (FS 193.501). This statute essentially provides a means whereby a property owner can convey the owner's development rights of their land to the Board (or other approved entities) through a conservation easement or similar legal covenant. Once the easement or covenant is established, the property appraiser can assess the value of the affected land based on the land use restrictions imposed by the easement or covenant. The property owner may benefit from this by realizing a reduction in the property tax assessed. The Board asked staff to bring back additional information on this matter for the Board's further consideration.

One piece of information requested by the Board was a map depicting lands that might qualify for a conservation easement, classify as environmentally endangered lands, or be utilized for outdoor recreational or park purposes. Please be advised that the County's GIS database does not contain the information necessary to produce such a map. Even if sufficient information existed, the numerous assumptions staff would have to make in preparing the map could result in a product of limited value. The County's Land Development Code (LDC) presently does not include a definition of environmentally endangered lands. As discussed in Section 4 below, staff does not recommend pursuing the creation of such a definition.

Pursuant to your request, I have evaluated the referenced topic. My comments are provided in the numbered sections that follow.

1. Tax Assessments for Lands Subject to a Conservation Easement Required Through the Site and Development Plan Review or Environmental Management Permitting Process

Projects subject to the site and development plan review process (including limited partition subdivisions) and/or the environmental management permitting process are often required to establish a conservation easement that encumbers one or more areas on the property. Such easements may protect one or more environmentally sensitive features (features classified as preservation or conservation areas), they may simply protect the natural area required for the project, or they may serve to protect both environmentally sensitive features and required natural area. The easements are granted to the County and are granted in perpetuity (i.e. easement does not expire and runs with the land).

Conservation easements recorded as part of the current County review and permitting process typically place substantial restrictions on the use of the land encumbered by the conservation easement. Considering these restrictions, it would seem reasonable that, for tax purposes, the valuation of the land subject to the conservation easement should reflect these restrictions.

It would seem that no new ordinances or processes need to be established in order for a property owner to obtain a reduced property tax assessment on land placed in a conservation easement via the County's current site and development plan review, subdivision review, or environmental permitting process. The provisions found in FS 193.501(3) appear to already apply; hence the Property Appraiser's Office could assess the value of the land encumbered by such a conservation easement based on land use restrictions established in the conservation easement agreement. Since these conservation easements are granted in perpetuity, FS 193.501(3)(b) would not need to be a consideration.

Subsections (4) and (5) of FS 193.501 largely deal with actions required in cases where the land owner seeks to deviate from the terms of a conservation easement and in cases where the grantee of the easement (i.e. Leon County) wishes to convey the easement to another party. Staff has not encountered a situation where the land owner wishes to deviate from the terms of a conservation easement. Staff has also not encountered a situation where the land owner or Board has wanted to convey a conservation easement or convey title to development rights encumbered by such an easement to another party. One exception to this has been rare instances where the land owner wants a conservation easement transferred to the City (e.g. County abandons its rights and title to the original easement and the land owner subsequently establishes a new conservation easement naming the City as the grantee). Given the language found in FS 193.501(5), the County may need to establish new regulations and processes for handling conveyance of County conservation easements to another party.

2. Establishment of a Conservation Easement or Other Protective Covenant Outside the Framework of the Site and Development Plan Review or Environmental Management Permitting Process

There may be instances where a property owner only wishes to restrict the usage of the owner's land (land conservation) by recording a conservation easement or establishing some other type of covenant in order to obtain a reduced property tax assessment pursuant to FS 193.501. Presently the County has no mechanism to review and authorize such an easement or covenant outside the framework of the site and development plan review process, subdivision approval process, or environmental management permit process. New regulations and processes would need to be generated for the County to enable review and approval of citizens' applications seeking solely to establish conservation easements or other legal instruments conveying development rights. These regulations and processes would also need to address matters such as reconveyance of development rights and transfer of development rights as discussed in FS 193.501(4) and (5).

Staff recommends pursuing such new regulations and processes only if the land to be protected through the establishment of a conservation easement or similar instrument contains one or more of the following sensitive environmental features:

- Wetlands that are not altered or degraded (unless property owner commits to restoring the degraded wetland functions).
- Natural waterbodies.
- Watercourses that are natural and not altered (unless property owner commits to restoring watercourse to its natural state).
- Floodplains that are undisturbed and undeveloped.
- Floodways that are undisturbed and undeveloped.
- Native forests.
- High quality successional forests.
- Active karst features.
- Habitats occupied or heavily utilized by one or more listed animal species.
- Habitats containing a significant population of one or more listed plant species.
- Areas containing significant cultural resources.
- Areas of severe grades if part of another type of preservation area or if adjoining another type of preservation area.

- Altered floodplains, floodways, and watercourses as well as man-made waterbodies (but only if these are important to protecting or improving regional drainage conditions and the property owner commits to protecting these features in perpetuity).

  Note: An exception to the above requirement might be lands set aside for outdoor recreational or park purposes. This topic is covered in Section 3 below.

It would be best if the conservation easement or legal covenant established protects the sensitive environmental features in perpetuity. Barring this, staff does not recommend consideration of any such covenant or conveyance unless the covenant or conveyance extends for a period of at least 10 years (preferably longer). Conservation restrictions should also not allow any agricultural activities to be conducted on the affected property unless such activities are conducted solely to help return disturbed areas to natural conditions. For example, a site to be placed in conservation easement may include a wetland area and an upland area harboring listed species; both areas were previously planted with pines as part of a silviculture operation. Terms of the conservation easement could allow harvesting of some of these pines (limited silviculture activities) to improve habitat conditions.

Any new process established to evaluate citizen requests to establish conservation restrictions (conservation easements, other instruments conveying and restricting development rights) should require the applicant to prepare a Natural Features Inventory (NFI) as part of their application. There must be a means whereby the presence and condition of sensitive environmental features are documented to allow staff to determine if the land qualifies for conservation restrictions in the first place. The NFI would serve this function. Any conservation restriction approved by the County should require that the property owner (the grantor) appropriately maintain and manage the protected land. Without good stewardship, the condition of the protected land could degrade over time. Any costs incurred by the property owner generated from this commitment to sound land management practices would seem a fair exchange for the tax benefits derived by the property owner.

3. Special Considerations for Conservation Easements or Other Covenants Involving Lands Utilized for Outdoor Recreational or Park Purposes

Section 2 recommended that the County only consider establishing conservation easements or other covenants conveying development rights in cases where the protected land encompasses certain environmentally sensitive features. According to FS 193.501, land utilized for outdoor recreational or park purposes may also be assessed a lower property tax when development rights and land uses are conveyed and restricted through an appropriate legal instrument.

A property owner may not have any sensitive environmental features on their property but may still seek to lower their property tax by designating all or part of the property as an outdoor recreational area or park. Should the County develop new regulations and procedures dealing with matters set forth in FS 193.501, the Board might consider extending these rules and processes to cover lands that are used for outdoor recreation/park purposes but do not include sensitive areas. If so, guidelines and criteria would need to be established by which staff could evaluate lands for their potential recreational benefit to the public. For example, a small isolated site covered by thick vines and debris would offer no recreational opportunities and should thus be excluded from consideration. The evaluation criteria would likely need to consider factors such a size, location, condition, accessibility, recreational demand in the area, scenic qualities, hiking opportunities provided, camping opportunities provided, swimming opportunities provided, length of time land is to be used as a public recreation area, etc.

The referenced statute states that a reduction in the ad valorem assessment levied on a property can be based on the property's use for outdoor recreational or park purposes only if the land is open to the general public. Because of this requirement, County evaluation criteria would need to ensure that the property adjoins a public right-of-way or similar public access easement. If it does not, the property owner would need to establish a new public access easement extending from the subject property to an existing public right-of-way or similar public access easement. Since the property must be open to the public, questions

pertaining to County liability may need to be considered. Matters associated with maintenance and management of the land would also be an important issue.

Establishing conservation easements or conveyances of development rights for lands to be used for outdoor recreational or park purposes may be a consideration when such proposals are reviewed and approved through the County's current site and development review process and permitting process. Due to the complexities involved, staff does not recommend pursuing new regulations and procedures to handle such matters outside this existing framework.

4. Environmentally Endangered Lands

Under the provisions of FS 193.501, a property owner whose property contains land qualified as "environmentally endangered" may obtain a lower property tax assessment on such lands if the owner conveys the development rights or establishes some other protective covenant. Before a property owner could take advantage of these provisions, however, the Board would have to designate which lands qualify as environmentally endangered through a formal resolution.

Staff recommends that the Board not pursue the adoption of new regulations that define what constitutes environmentally endangered lands. This would likely involve a lengthy and highly debated process. Any new regulations adopted could also result in unintentional repercussions that adversely affect reasonable development. Given current regulations addressing preservation and conservation areas combined with the approach described in Section 2, there seems no need to pursue the environmentally endangered lands issue.

5. Costs Associated with the Conservation Lands Assessment Program

Lands qualifying under the provisions of FS 193.501 may realize a reduced property tax assessment. Obviously, this could reduce County ad valorem tax revenues. It is almost impossible to anticipate the potential magnitude of this revenue reduction. It seems unlikely the reduction would be so great as to necessitate raising property taxes to offset the loss; however this possibility cannot be completely overruled.

If new regulations and procedures are adopted whereby property owners can apply to convey development rights to the County (or other allowed entity) via a conservation easement or covenant outside the framework of the existing County review and permitting process, the Board should also consider the ancillary costs involved. These costs could be significant and might include:

- Staff time and overhead expenditures necessary to develop and adopt new regulations and procedures.
- Staff time and overhead expenditures necessary to process applications to establish a conservation easement or covenant. (Note: This could create the need for additional staff.)
- Staff time and expenses necessary to process requests for reconveyance of development rights previously conveyed to the County (or other appropriate entity) via a conservation easement or other covenant.
- Staff time and related expenses necessary to prepare agenda items for the Board pertaining to Board acceptance of conservation easements and covenants as well as agenda items pertaining to the reconveyance of development rights.
- Staff time and related expenses necessary to record and document Board-approved conservation easements and covenants as well as Board-approved changes to such easements and covenants.
- Staff time and related expenses necessary to track covenants and conveyances that are not granted in perpetuity.
- Staff time and overhead expenditures associated with ensuring compliance with the terms and conditions of conservation easements and covenants.
- Staff time and expenses necessary to process any violations of the terms and conditions of conservation easements and covenants.